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No. 88-1640

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

MICHIGAN CITIZENS FOR AN INDEPENDENT PRESS, *et al.*,
v. *Petitioners,*

RICHARD THORNBURGH,
UNITED STATES ATTORNEY GENERAL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF AMICUS CURIAE IN SUPPORT OF
PETITIONERS MICHIGAN CITIZENS FOR AN
INDEPENDENT PRESS FROM WILLIAM D. McMASTER,
McMASTER COMMUNICATIONS, INC. AND
MICHIGAN INVESTOR GROUP

LAWRENCE PATRICK NOLAN
LAWRENCE P. NOLAN AND
ASSOCIATES, P.C.
239 S. Main St.
Eaton Rapids, MI 48827
(517) 663-3306

2097

QUESTIONS PRESENTED

1. Did Knight-Ridder, Inc., owner of The Detroit Free Press, deliberately withhold relevant facts on its *corporate option to sell The Detroit Free Press* rather than shut it down if the Detroit Joint Operating Agreement (JOA) is not approved under the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*?

2. Does purposeful avoidance by Knight-Ridder, Inc. to consider or disclose obvious opportunities to sell The Detroit Free Press constitute sufficient reason to believe that Attorney General Ed Meese was misled, or acted in ignorance, when he stated in his brief that he was granting the Detroit JOA "to save the Free Press"?

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INTEREST OF AMICUS CURIAE

Amicus William D. McMaster, 50, who operates McMaster Communications, Inc., headquartered in Bloomfield Hills, Michigan, initiated his plan to purchase The Detroit Free Press in December 1988 as an alternative to Knight-Ridder, Inc. shutting it down. He and his 30 investors, called the Michigan Investor Group, are one of the potential and capable buyers of The Detroit Free Press.

The Michigan Investor Group communicated to Knight-Ridder, Inc. numerous times that, if successful in purchasing the tenth largest daily newspaper in America, it will continue the 157 year-old Detroit Free Press as an ongoing enterprise and convert the editorial format to a "statewide community newspaper" with Michigan investors, Michigan management and Michigan writers marketing their product to Michigan readers and advertisers.

JURISDICTION

The judgment of the court of appeals was entered on January 27, 1989, and the order denying rehearing en banc was entered on February 24, 1989 (Pet. App. 164a, 199a). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

STATUTES AND REGULATIONS

The Newspaper Preservation Act, 15 U.S.C. Sec. 1801, *et seq.*, provides in pertinent part:

Section 1802 (5): The term "failing newspaper" means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.

STATEMENT

Detroit is the nation's fourth largest market in terms of overall newspaper circulation, exceeded only by New York, Chicago and Los Angeles.

The Detroit Free Press, one of 29 daily newspapers published by Miami-based Knight-Ridder, Inc., has the 10th largest circulation in America.

In 1981, the Free Press devised a marketing plan that would "guarantee an iron-clad case for a Joint Operating Agreement (JOA) in Detroit." Unfortunately the plan called for achieving market dominance over The Detroit

News and has been almost suicidal to shareholders of Knight-Ridder, Inc.

ARGUMENT

KNIGHT-RIDDER, INC. REFUSED OFFERS TO PURCHASE THE DETROIT FREE PRESS

In 1983, Knight-Ridder, Inc. aborted at the last minute an offer by a Michigan investor to purchase The Detroit Free Press. The selling price was agreed to be \$125 million.

On May 9, 1986, The Detroit Free Press and Detroit News filed an application for approval of a JOA. Nowhere in the application did the Free Press admit that its later discredited "downward spiral" could be simply remedied by *selling* The Free Press.

Attorneys for The Detroit Free Press successfully argued against any intervenors being granted standing in the 1987 hearings conducted by Administrative Law Judge Morton Needelman who could creditably testify that The Free Press could be sold rather than shut down if the JOA was denied.

In fact, only the Mayor of the City of Detroit and some of the unions representing Free Press employees were allowed to intervene. Free Press readers and advertisers were excluded, along with potential purchasers.

On December 29, 1987, Administrative Law Judge Morton Needelman ruled that the JOA should be denied because The Free Press does not qualify as a failing newspaper under the Newspaper Preservation Act.

Salvage value of The Free Press, if the JOA was not approved, was reported in 1977 to be \$50 million. In addition, over 2,500 jobs would be lost in the process.

A public opinion poll of Detroit Free Press readers and advertisers indicated that 83 percent were opposed to the Joint Operating Agreement.

On August 8, 1988, four days before leaving office, Meese granted the Detroit JOA stating in his brief that he considered it "necessary to save The Free Press".

By refusing to put The Free Press up for sale, counting instead on Court approval of the monopoly with The Detroit News, Knight-Ridder gambled and lost \$159 million in Shareholders' Deficit by blindly continuing with the mistaken market strategy of seeking market dominance.

Meanwhile, Knight-Ridder, Inc. engaged a New York investment banking firm to sell two of its unprofitable newspapers (Star News in Pasadena and the Post Tribune in Gary), and its entire network of eight television stations. Also, Knight-Ridder, Inc. shut down its JOA partner, in Miami, The Miami News, leaving only The Miami Herald publishing.

Selling The Free Press now will save Knight-Ridder shareholders the risk of management bleeding the company throughout 1989 and into the 1990's.

Starting on December 19, 1988, William D. McMaster, a Bloomfield Hills, Michigan public executive, began communication with James K. Batten, President and CEO of Knight-Ridder, Inc. about the sale of The Detroit Free Press to his Michigan Investor Group. (See Exhibits 1-4; December 19 McMaster letter to Batten, December 21 Batten letter to McMaster, December 23 McMaster letter to Batten, December 23 Batten letter to McMaster.)

On April 5, 1989, David Lawrence Jr., Publisher of The Detroit Free Press, posted a notice to over 2,000 employees that they would soon be receiving at their homes 60-day job termination notices "almost identical" to the ones sent on December 5, 1988.

"The Friendly Fast Facts No. 48" cited the Worker Adjustment and Retraining Notification Act and the pending action of the Supreme Court. Through this

method, The Free Press management pointedly began to take the required steps to shut down The Free Press if the JOA is not approved.

On April 16, 1989, McMaster requested from Batten "financial statements in order for our Michigan Investor Group to submit an offer to purchase The Detroit Free Press from Knight-Ridder, Inc. by April 27, 1989".

The April 19 edition of The Detroit Free Press printed the following paragraph in its story headlined, "ANSWER SOUGHT ON OFFER TO PURCHASE FREE PRESS": (See Exhibit 5.)

"Alvah H. Chapman Jr., chairman of Knight-Ridder, Inc., said Tuesday he had not seen McMaster's letter, but said: 'I haven't any comment on his latest epistle.

The paper is absolutely not for sale."

The same day, the Detroit News published a story under the heading, "PUBLIC RELATIONS EXEC RE-NEWS EFFORT TO PURCHASE FREE PRESS": (See Exhibit 6.)

"But Knight-Ridder Vice President Frank Hawkins Jr. said the newspaper is not for sale. McMaster 'might as well write to the president and offer to buy the White House' Hawkins said.

"Hawkins said Knight-Ridder has 'no obligation, no incentive and no reason' to provide the information."

"It's a free country, (McMaster) can make all the offers he wants, but there's nothing for sale,' Hawkins said."

QUESTIONS ANSWERED

1. Knight-Ridder, Inc. continues to falsely maintain that its only alternative to a Detroit Joint Operating Agreement is to shut down The Detroit Free Press.

2. Former Attorney General Meese, and the Courts, were, and continue to be, deceived by the highest ranking Knight-Ridder executives who testified that the only way to "save The Free Press" is with a monopoly. Yet, away from the eyes and ears of the Attorney General and the Courts in Washington, D.C., Knight-Ridder derides potential purchasers of The Free Press. Sale of The Free Press has always been a logical corporate alternative to a Detroit JOA or newspaper shut down.

CONCLUSION

Sale of The Free Press would disqualify Knight-Ridder as an applicant for a Joint Operating Agreement. As Judge Needelman determined, there is no need for a JOA in order to "save The Detroit Free Press".

The Newspaper Preservation Act states:

"The term "failing newspaper" means a newspaper publication which, *regardless of its ownership or affiliations*, is in probable danger of financial failure."

Refusal to sell The Free Press has artificially created a loss condition which is normally remedied in American business by the sale of the on-going enterprise to the most capable buyer.

The petition for a writ of certiorari requested by Michigan Citizens For An Independent Press should be granted.

Respectfully submitted,

LAWRENCE PATRICK NOLAN
LAWRENCE P. NOLAN AND
ASSOCIATES, P.C.
239 S. Main St.
Eaton Rapids, MI 48827
(517) 663-3306

APPENDIX

1a

APPENDIX

(EXHIBIT 1)

[SEAL]

McMASTER COMMUNICATIONS, INC.
2655 Woodward Avenue, Suite 160
Bloomfield Hills, Michigan 48013
(313) 332-6900
FAX: (313) 332-6904

Marketing
Public Relations
Advertising
Since 1968

December 19, 1988

Mr. James K. Batten, President
KNIGHT-RIDDER, INC.
One Herald Plaza
Miami, FL 33132-1693

Dear Mr. Batten:

Satisfied that initial and discreet explorations confirm the potentiality of forming a company to purchase and profitably operate The Detroit Free Press *if the Detroit JOA is not approved*, I now request a 15-minute appointment in your office later *this week*.

Among the diverse Michiganians I have approached recently is Ed Wendover of Citizens for an Independent Press. Frankly, Mr. Batten, I've been a part of that group since its inception and share its goal of keeping The Free Press operating independently.

It is also common belief of the dynamic individuals with whom I'm exploring the future of Free Press local ownership that any forthcoming proposal to purchase The Free Press should endeavour to retain as many of

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your current employees as is practical. Stock ownership may be feasible.

Be assured that our interest in The Free Press is dependent upon three factors:

1. Determination by the U.S. Court of Appeals that a Detroit JOA would be illegal.
2. Establishment of normal cooperation expected of a NYSE-listed company with a potential suitor for one of its properties.
3. Absence of publicity initiated by any party.

Sincerely,

/s/ William D. McMaster
WILLIAM D. MCMASTER.
President

3a

(EXHIBIT 2)

KNIGHT
RIDDER

James K. Batten
President and
Chief Executive Officer
(305) 376-3868

Knight-Ridder, Inc.
One Herald Plaza
Miami, Florida 33132-1693

December 21, 1988

Mr. William D. McMaster
President
McMaster Communications, Inc.
2655 Woodward Avenue, Suite 160
Bloomfield Hills, Michigan 48013

Dear Mr. McMaster:

Thanks for your letter of December 19, expressing interest in purchasing the *Detroit Free Press* if the JOA is ultimately not approved.

We continue to be optimistic about prospects for approval by the federal courts.

For that reason, I see no reason to pursue the matter at this time.

In the unlikely event that the Free Press should ever be offered for sale, I will assure that you are among those promptly notified.

Sincerely,

/s/ James K. Batten
JAMES K. BATTEN

JKB/so

(EXHIBIT 3)

[SEAL]

McMASTER COMMUNICATIONS, INC.
 2655 Woodward Avenue, Suite 160
 Bloomfield Hills, Michigan 48013
 (313) 332-6900
 FAX: (313) 332-6904

Marketing
Public Relations
Advertising
Since 1968

December 23, 1988

Mr. James K. Batten, President
 KNIGHT-RIDDER, INC.
 One Herald Plaza
 Miami, FL 33132-1693

Dear Mr. Batten:

According to Detroit newspaper accounts early this month, The Detroit Free Press issued 60-day termination notices to its 2,017 employees that "the Free Press will be closed if a joint operating agreement between the papers is denied."

A story in The Detroit News on December 6, 1988 states:

Free Press owner Knight-Ridder, Inc. vowed months ago to close or sell the Free Press without a JOA.

"If the JOA is denied, notice under the act is hereby given that the Detroit Free Press will shut down all operations and terminate all employees," the letters say.

The legal decision on the Detroit JOA may be just hours away. Certainly the timing of your termination

notices to Free Press employees is strong indication that you expect the decision by the end of next month. Thus, *60-days' notice.*

I'm concerned that your letter received here this morning is attempting to take a private position on a public issue. The Free Press is important to potential investors, readers and advertisers, as well as to Free Press employees, as an ongoing enterprise.

There is also a corporate responsibility of Knight-Ridder, Inc., as a New York Stock Exchange listed company, to make contingency plans to safeguard Knight-Ridder's shareholder investment in The Detroit Free Press.

Time is obviously short, Mr. Batten. By indicating in published statements that you will either shut down The Free Press or sell it, you publicly put The Free Press "in play" several months ago.

I urge you to reconsider your private position to coincide with your public position and give me access to Free Press financial figures so that we may prepare an informed offer to purchase that significant Michigan operation.

Cordially,

/s/ Bill McMaster
 WILLIAM D. McMASTER

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(EXHIBIT 4)

KNIGHT
RIDDER

James K. Batten
President and
Chief Executive Officer
(305) 376-3868

Knight-Ridder, Inc.
One Herald Plaza
Miami, Florida 33132-1693

December 23, 1988

Mr. William D. McMaster
President
McMaster Communications, Inc.
2655 Woodward Avenue, Suite 160
Bloomfield Hills, Michigan 48013

Dear Mr. McMaster:

As you know, we are committed to pursuing the JOA application to its ultimate conclusion. We continue to be optimistic about prospects for approval.

If, contrary to our expectations, the JOA is not finally approved, we will give due consideration to all our varied obligations to our employees, shareholders and the Detroit community.

Under these circumstances no purpose would be served by the sort of meeting you propose.

Sincerely,

/s/ Jim Batten
JAMES K. BATTEN

JKB/so

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(EXHIBIT 5)

Wednesday, April 19, 1989

BUSINESS
Detroit Free Press

ANSWER SOUGHT ON AN OFFER TO
PURCHASE FREE PRESS

BY CHRISTOPHER COOK
Free Press Staff Writer

William McMaster, the Bloomfield Hills public relations public relations consultant who has assembled an investor group interested in buying the Free Press, plans to go ahead without waiting for court action on the pending Free Press/Detroit News joint operating agreement.

McMaster "urgently requested" that Knight-Ridder Inc., which owns the Free Press, provide financial information so his group can make a purchase offer before the company's April 28 shareholder meeting.

In a four-page letter to Knight-Ridder President James K. Batten, McMaster said: "We are now removing the Detroit JOA as consideration in our offer to begin negotiations leading to the purchase of the Detroit Free Press."

Neither McMaster nor Batten could not be reached for comment on the letter, dated April 16.

Alvah H. Chapman Jr., chairman of Knight-Ridder Inc., said Tuesday he had not seen McMaster's letter, but said: "I haven't any comment on his latest epistle. The paper is absolutely not for sale."

In December, McMaster approached Knight-Ridder about buying the Free Press if the JOA were denied. He has said his group comprises 30 state business leaders and has said financing is not a problem.

In his letter, he said selling the paper, rather than spending "untold millions of dollars more" to seek JOA approval, would be "a practical, realistic and overdue action."

Knight-Ridder has said that it anticipates a favorable ruling on the JOA. The company has said it would close the Free Press if the JOA were denied, but has not ruled out a sale at that time.

The JOA was approved by then-Attorney General Edwin Meese in August but has been delayed until the U.S. Supreme Court decides whether it will consider an appeal from a group of Michigan advertisers and readers who want the JOA stopped. If the court refuses to hear their case, the newspapers have said they would quickly launch the JOA.

If the court accepts the appeal, a final decision could be a year away.

(EXHIBIT 6)

The Detroit News
Wednesday, April 19, 1989

PUBLIC RELATIONS EXEC RENEWS EFFORT TO PURCHASE FREE PRESS

Bloomfield Hills public relations executive William McMaster said Tuesday he and a group of investors will make an offer to buy the Detroit Free Press by April 27.

But Knight-Ridder Vice-President Frank Hawkins Jr. said the newspaper is not for sale. McMaster "might as well write to the president and offer to buy the White House," Hawkins said.

The U.S. Supreme Court is expected to decide soon whether to hear an appeal of the approval of a joint operating agreement between the Free Press and The Detroit News. Lawyers involved in the case believe the court will consider the matter as early as April 28.

If the court declines to hear the appeal, the Free Press and The News will merge business operations, split profits and publish joint weekend editions while keeping separate editorial staffs.

If the court takes the appeal, a final decision probably wouldn't come for a year. If the JOA is ultimately denied, Knight-Ridder has said it will close or sell the Free Press.

In a letter Monday to Knight-Ridder President and Chief Executive James K. Batten, McMaster requested recent Free Press financial data to help the group prepare an offer before Knight-Ridder's annual shareholder meeting April 28.

Hawkins said Knight-Ridder has "no obligation, no incentive and no reason" to provide the information.

"It's a free country, (McMaster) can make all the offers he wants, but there's nothing for sale," Hawkins said.

— *Bryan Gruley*